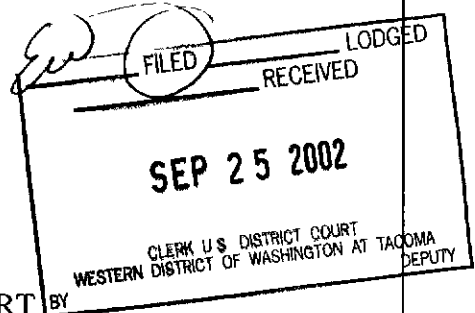


The Honorable Franklin D. Burgess



CV 02 05329 #00000009

ORIGINAL



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TRACEY LEE HUGHES,

Plaintiff,

v

TOWN OF RAINIER, A Municipal Corporation  
and MICHAEL ELLIOTT an Individual and JANE  
DOE ELLIOTT, his wife and their marital  
community property,

Defendants

No C02-5329FDB

PLAINTIFF'S MOTION FOR  
DEFAULT JUDGMENT

Noted on Motion Calendar for.

October 4, 2002

Pursuant to Rule 55(b)(2), of the Local Rules of this Court, Plaintiff Tracey Lee Hughes requests that a default judgment be ordered by the Court against Defendant Town of Rainier in this matter. In support of this Motion for Default Judgment, Plaintiff submits the Declaration of Frederick H. Gautschi, III (with exhibit) and the Certificate of Service on Defendant Town of Rainier dated July 1, 2002.

**FACTS**

On June 25, 2002, the Complaint in this matter was filed. It was served on June 28, 2002, on the Town of Rainier at the Rainier Town Hall at 102 Rochester Street W., Rainier,

PLAINTIFF'S APPLICATION FOR  
DEFAULT - 1

Harrell Desper Connell, Hunter  
& Gautschi, PLLC  
1325 Fourth Avenue, Suite 600  
Seattle, WA 98101  
(206) 583-0050  
Fax (206) 583-0051

9

1 Washington. (Certificate of Service on Defendant Town of Rainier authored by Julie  
2 Oberbillig)

3 On July 9, 2002, Plaintiff's attorneys were served with a Notice of Appearance by  
4 Johnson Christie Andrews & Skinner on behalf of all Defendants in this matter. On July 22,  
5 2002, Robert Christie of Johnson Christie Andrews & Skinner and James Macpherson, submitted  
6 a Notice of Withdrawal and Substitution for Defendants Elliott, indicating that James  
7 Macpherson was substituting for Robert Christie as counsel for Defendants Elliott. (Gautschi  
8 Declaration, ¶ 2 & 3)

9 In August 2002, Robert Christie was requested in writing to serve and Answer on counsel  
10 for the Plaintiff. Mr. Christie never responded to that request. On August 29, 2002, Plaintiff's  
11 attorneys again requested from Mr. Christie when the Answer for the Town of Rainier would be  
12 forthcoming. Mr. Christie indicated that he was "working on the Answer and would have it to  
13 (Plaintiff's counsel) soon." (Gautschi Declaration, ¶ 4 & 5)

14 On September 11, 2002, Plaintiff's counsel wrote to Mr. Christie that if Defendant's  
15 counsel did not file an Answer by September 17, 2002, Plaintiff's counsel was instructed by  
16 Plaintiff to apply for a default judgment. To date, Mr. Christie has not responded to that letter.  
17 Nor has Defendant Town of Rainier Answered the Complaint in this matter which was due on  
18 July 18, 2002. (Gautschi Declaration, ¶ 6)

### 19 ARGUMENT

20 The Plaintiff in this matter, like most plaintiffs, is reluctant to file a Motion for Default  
21 Judgment when there has been an appearance by the opposing party. However, in this case the  
22 Plaintiff has no alternative but to move for a Default Judgment since she has exhausted all efforts  
23 to persuade the Defendant Town of Rainier to file its Answer and has received promises from  
24 counsel for Defendant Town of Rainier to Answer this Complaint which have not been honored.  
25 It is anticipated that upon service of this Motion the Town of Rainier will finally file its Answer.

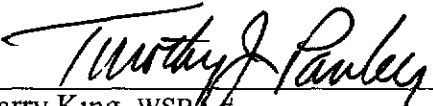
1 However, in these circumstances the Plaintiff has not been able to persuade Defendant Town of  
2 Rainier to file its Answer without resort to the Local Rules of this Court For more than a month  
3 Plaintiff has attempted to persuade the attorney for Defendant Town of Rainier without success  
4 to simply file an Answer Finally, in these circumstances the Plaintiff should be awarded her  
5 attorneys' fees in bringing this Motion

6  
7 **CONCLUSION**

8 For the reasons stated above, the Court should enter a Default Judgment against the Town  
9 of Rainier and award Plaintiff her reasonable attorneys' fees in bringing this Motion

10 DATED this 24th day of September, 2002

11 Harrell, Desper, Connell, Hunter  
& Gautschi, P.L.L.C

12   
13 Larry King, WSBA #  
14 Frederick H. Gautschi, III, WSBA #20489  
15 George T. Hunter, WSBA #14388  
16 Timothy J. Pauley, WSBA #18583  
17 Bruce A. Harrell, WSBA #17173  
18 Attorneys for Plaintiff  
19  
20  
21  
22  
23  
24  
25

*The Honorable Franklin D. Burgess*

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TRACEY LEE HUGHES,

Plaintiff,

v

TOWN OF RAINIER, A Municipal  
Corporation and MICHAEL ELLIOTT, an  
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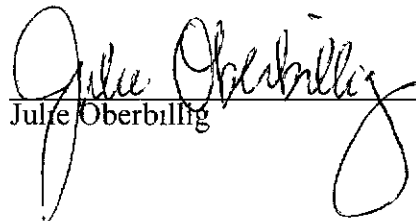
Defendants

No C02-5329FDB

CERTIFICATE OF SERVICE  
ON DEFENDANT TOWN OF RAINIER

I, Julie Oberbillig, swear under penalty of perjury that on the 28<sup>th</sup> day of June, 2002, I served defendant Town of Rainier with a Summons and Complaint in the above captioned lawsuit by serving them on Elizabeth Prihoda, City Clerk for the Town of Rainier. I served Ms Prihoda at the Rainier Town Hall at 102 Rochester St West in Rainier, Washington.

SIGNED this 1<sup>ST</sup> day of July, 2002

  
Julie Oberbillig

LAW OFFICE OF  
**LARRY J. KING**  
PO Box 796  
Olympia, WA 98507-0796  
(360) 352-1591  
FAX (360) 352-4563

COPY